

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	ID No. 9712003463
)	
JOHN MILLER,)	
)	
Defendant.)	

Submitted: April 15, 2011
Decided: July 29, 2011

On Defendant's *Pro Se* Motion for Postconviction Relief. DENIED.

ORDER

Richard Zemble, Esquire, Department of Justice, 820 North French Street,
Wilmington, Delaware 19801.

John Miller, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna,
Delaware 19977. *Pro se.*

CARPENTER, J.

On this 29th day of July, 2011, upon consideration of Defendant John E. Miller's Motion for Postconviction relief, it appears to the Court that:

1. On April 13, 1998, John E. Miller ("Defendant") pled guilty to Robbery First Degree. On August 28, 1998, the Court declared Defendant to be a habitual offender and sentenced him to thirty years incarceration. On August 4, 1999, Defendant's conviction was affirmed by the Supreme Court of the State of Delaware.

2. On March 8, 2011, Defendant filed the present motion for postconviction relief. The Defendant supplemented his motion with a letter to the Court on April 15, 2011 entitled "Notice of Hunger/Dehydration." By the Court's count, the Defendant has previously filed thirteen unsuccessful motions for postconviction relief in connection with this guilty plea. For the reasons that follow, this motion for postconviction relief will be summarily dismissed.

3. Superior Court Criminal Rule 61(i) sets forth the procedural rules that may operate to bar a defendant's claim to postconviction relief.¹ However, under Rule 61(d)(4), the Court may summarily dismiss a motion for postconviction relief

¹ The Court will not consider the merits of a defendant's motion for postconviction relief if procedurally barred by the Rule.

without consideration for the procedural bars “if it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief....”²

4. In the present motion, the Defendant claims that he received ineffective assistance of counsel because his attorney did not explain the elements of the charge to him and as such his plea of guilty to the charge of robbery in the first degree was not knowingly made.³ In his “Notice of Hunger [and] Dehydration” filed with the Court on April 15, 2011, the Defendant elaborated that the indictment charging him with Robbery First Degree was defective because, under Delaware law, a verbal declaration that one has a gun is not a display of what appears to be a Delaware weapon as is required to support a charge of robbery in the first degree, and his guilty plea is therefore invalid.⁴

5. As noted above, the Court has already entertained thirteen previous unsuccessful motions for postconviction relief from this Defendant in connection with his guilty plea. The Defendant has presented no new grounds for relief in his most recent motion and has in fact been complaining of the allegedly defective indictment since 2002. Accordingly, the Court will deny the motion as being

² Super. Ct. Crim. R. 61(d)(4).

³ D.I. 324, Fourteenth Motion for Postconviction Relief.

⁴ D.I. 327, Notice of Hunger/Dehydration.

untimely, repetitive, and having been previously adjudicated and the motion is summarily dismissed pursuant to Superior Court Criminal Rule 61(d)(4).

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.